

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CHARLES WAGNER,

Plaintiff,

v.

No. 04-2696 B

MERIT DISTRIBUTION, et al.,

Defendants.

ORDER OVERRULING APPEAL AND AFFIRMING
MAGISTRATE JUDGE'S ORDER

On December 29, 2005, Magistrate Judge Diane Vescovo entered a order denying the November 21, 2005 motion of the Plaintiff, Charles Wagner, to amend the scheduling order and to compel certain discovery. Pursuant to Rule 72 of the Federal Rules of Civil Procedure, upon the filing of objections, the district court judge is to "consider such objections and . . . modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." U.S. v. U.S. Gypsum Co., 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed 746 (1948). Based upon a careful review of the order and the filings of the parties, the undersigned cannot find that the magistrate judge's conclusion was clearly erroneous or contrary to law. Thus, the appeal is DENIED and the order of the magistrate judge is AFFIRMED.

IT IS SO ORDERED this 9th day of March, 2006.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE